

In the Matter of Merchant Mariner's Document No.Z-623483
Issued to: JOAQUIN L.Y. TORRES

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

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JOAQUIN L.Y. TORRES

This appeal comes before me pursuant to Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 137.11-1.

On 8 and 12 April, 1949, Appellant appeared before an Examiner of the United States Coast Guard at New York City to answer a charge of "misconduct" based upon a specification alleging that while Appellant was serving as watertender, on board the American SS WALTER A. LUCKENBACH, under authority of his Merchant Mariner's document, on or about 2 December, 1948, he assaulted and battered another member of the crew, C.W. Swan, with a dangerous weapon - a razor.

At the hearing, Appellant was adequately informed as to the nature of the proceedings and the possible outcomes. Appellant voluntarily waived his right to representation by counsel and entered a plea of "guilty" to the charge and specification. The Investigating Officer made his opening statement and then Appellant testified under oath in his own behalf. He made a lengthy statement concerning the circumstances which led up to the attack. Because of Appellant's poor grammar, his testimony is slightly confusing but throughout he attempts to justify his attack on Swan on the basis of Swan's conduct toward Appellant. At the conclusion of the hearing, the Examiner found the specification "proved by plea" and the charge "proved". Thereupon, he entered an order revoking Merchant Mariner's Document Z-623483 and all other valid licenses or certificates issued to Appellant by the United States Coast Guard.

In his appeal, Appellant requests that the action in this proceeding be reconsidered. He states that he was so infuriated by Swan's crude joking that he did not know what he was doing after he picked up the razor blade. He further calls attention to the fact that he has never had any trouble on ships since he first obtained his seaman's papers in 1927. This latter statement is substantiated by the lack of a record of any previous disciplinary action having been taken against Appellant.

FINDINGS OF FACT

During the period of time referred to herein, Appellant was serving as a member of the crew in the capacity of watertender on board the American SS WALTER A. LUCKENBACH under authority of Merchant Mariner's Document No.Z-623483.

Appellant and another member of the crew, Swan, were occupants of the same forecastle aboard the LUCKENBACH. For approximately four months prior to 2 December, 1948, Swan provoked Appellant by his vulgar teasing. Appellant repeatedly asked Swan to stop it. When he attempted to push Swan away, the latter was always able to overpower the Appellant. Shortly before 2 December, 1948, Swan started to touch Appellant on his buttocks as a part of the teasing routine.

On 2 December, 1948, while the ship was in the port of Melbourne, Australia, Appellant began to drink whiskey on the aft hatch after having been relieved of the watch at midnight. While drinking, he brooded about the vulgar familiarities practiced on him by Swan. At about 2:40 A.M., Appellant entered his forecastle while Swan was in the lower bunk. It is not clear whether Swan was asleep or whether he was awake and started to tease and touch Appellant. Appellant contends that Swan was awake and his actions caused Appellant to lose his temper and become so mad that he picked up a razor blade and attacked Swan with it. But Appellant also testified, upon questioning, that he was too drunk to know if Swan was asleep or what kind of razor he picked up. Whether it was an ordinary strop razor or simply a razor blade is not clear. Regardless of this fact, Swan received three serious wounds on his face, back and left shoulder for which he was hospitalized for five days and was given three blood transfusions. After the incident, Appellant ran off the ship and went to sleep on the docks. Appellant testified that he has no recollection of his actions from the time he picked up the razor (or razor blade) until the time he awakened on the dock later the same morning. After several days, the Appellant surrendered to the American Consul at Melbourne.

OPINION

Assault and battery with a dangerous weapon resulting in injury is regarded as a particularly serious offense and should be attended with drastic action against the offender in cases of unprovoked attacks. To permit a man, who is likely to again perpetrate such an offense, to retain his Merchant Mariner's document would be to add an unnecessary hazard to the many natural perils of the sea. Contrary to this, the policy of the Coast Guard is to protect merchant seamen and ships, to the best of its ability, from such additional dangers. However, taking into consideration the fact that this is the first disciplinary action of any kind which has been taken against the Appellant during his long period of satisfactory service on board American merchant ships, it is my opinion that it is highly improbable that Appellant would commit such an offense again if he is permitted to retain his Merchant Mariner's document.

The aggravated vulgarity and attending annoyance, which Swan caused Appellant, does not completely clear Appellant of the charge since it is a well established rule of law that a person may legally use only that amount of force against an attacker which is necessary to repulse the attacker and prevent bodily harm to the person attacked. Appellant was greatly provoked, irritated and aggravated but it does not appear from the record that he was in danger of receiving serious bodily injury at the hands of Swan.

The record does not establish to my satisfaction that this attack was one which had been

premeditated and maliciously planned beforehand but was more in the nature of a spontaneous reaction induced both by Appellant's belief that Swan was again indulging in the vulgar familiarities immediately prior to the attack and by the whiskey Appellant had been drinking. Appellant's vague recollection as to just what happened substantiates the conclusion that he did not have the mental capacity, at that time, to execute a planned premeditated assault.

Undoubtedly, Appellant was excessively harassed, both mentally and physically, by Swan's incessant vulgarities. Although this is not sufficient justification for the remedy utilized by the Appellant, it is adequate reason, when considered together with Appellant's long unblemished record of service, for imposing less than the maximum penalty of revocation.

CONCLUSION and ORDER

There is ample evidence in the record to sustain the order of revocation which was imposed by the Examiner in the exercise of his discretionary authority. But due to the persuasiveness of the extenuating circumstances in the present case, the Order of the Examiner dated 12 April, 1949, is modified to the extent that Appellant's Merchant Mariner's Document and all other valid licenses or certificates of service which have been issued to him are suspended for a period of one year from 12 April, 1949.

As so modified, said Order is AFFIRMED.

J.F. FARLEY
Admiral, United States Coast Guard
Comandant

Dated at Washington, D.C., this 19th day of July, 1949.